

Remarks

Claims 1–94 are pending in the captioned application. Applicants have amended claims 6, 12, 22, 30, 37, 38, 49, 61, 73, 81, 88, 89 and combinations thereof in response to the Examiners objections. Applicants respectfully submit that the amendments are fairly based on the specification and earnestly solicit their allowance.

The Examiner has rejected claims 6, 12, 22, 30, 37–38, 49, 61, 73, 81, 88–89 under 35 U.S.C. § 112, second paragraph, as being “indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Specifically, the Examiner states, “claim(s) 6, 12, 22, 30, 38, 49, 61, 73, 81, 88 is/are indefinite because they recite an improper Markush group.”

In response, Applicants have amended the claims to recite the appropriate Markush group.

The Examiner has also stated, “claim(s) 37 and 88 is/are indefinite because the phrase ‘the reactive site’ lacks proper antecedent basis in Claim 1 and 44, respectively.”

In response, Applicants have amended claim 37 to be dependent upon claim 34. Similarly, Applicants have amended claim 88 to be dependent upon claim 83 of the foregoing. Applicant respectfully asserts the Examiner’s rejections cannot be sustained and should be withdrawn.

The Examiner has rejected claims 1–43 under “the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of Johnson et al. [US Patent 6,372,813 (16 APR 2002)] in view of Schena et al. (1998).” The Examiner continues, “although the conflicting claims are not identical, they are not patentably distinct from each other.”

The Examiner has also rejected claims 49–94 under “the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of Johnson et al. [US Patent 6,372,813 (16 APR 2002)] in view of Wang et al. (1995).” The Examiner continues, “although the conflicting claims are not identical, they are not patentably distinct from each other.”

In response, and for administrative convenience only and without acknowledging that the Examiner’s obviousness-type double patenting rejection is correct, Applicants have filed, concurrently herewith, a terminal disclaimer over U.S. Patent 6,372,813. Applicants respectfully assert that the terminal disclaimer overcomes the obviousness-type double patenting rejection, which cannot be sustained and should be withdrawn.

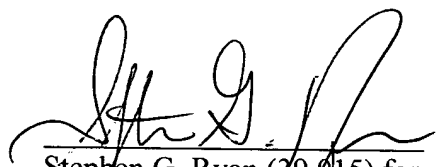
The Examiner states, “the claimed invention appears to be free of the prior art because the applicant is the first to describe a method of performing expression analysis and/or SNP detection wherein the microarray is formed by attaching the probe(s) to a polymer coated support via 2+2 photocycloaddition.”

The Examiner continues, “the only piece of ‘prior art’ that concerns me is the patent issued to Motorola and which describes the preparation a polymer coated support (i.e. microarray) via 2+2 photocycloaddition. It is noted that US Patent 6,372,813 has a different inventive entity with one inventor in common with the instant application, and that the instant application claims priority to 09/344,620 now US Patent 6,372,813. Finally, during a telephonic interview with the attorney of record - Jonathan Blanchard - on 13 NOV 02 the examiner was informed that the instant invention had been sold to Amersham. Please clarify.”

In response, Applicants wish to point out that the instant invention, as well as the ‘813 patent has been sold to Amersham Biosciences AB, and the assignment has been recorded with the U.S. Patent and Trademark Office assignment branch at Reel 013323, Frame No. 0940. Applicants trust that this information is sufficient for a response to the Examiner’s question.

In view of the foregoing, Applicant respectfully asserts the Examiner's rejections cannot be sustained and should be withdrawn. Applicants believe that the claims, as amended, are in allowable form and earnestly solicit the allowance of claims 1-94.

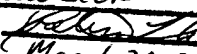
Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 20 Mar 03.

Melissa Leck
Signature 
Date March 20, 2003